

ISSUES

The issue presented for decision by the Appeals Board is:

- (1) What is the nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record and the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

- (1) While performing her job duties for respondent, claimant Melissa Dinh, injured her hands, wrists, shoulders, neck and back. As a result of these injuries, claimant is entitled to an eight percent (8%) permanent partial general disability on the basis of functional impairment.

Claimant testified that she injured her hands, wrists, shoulders, neck and back while working on the conveyor line as a tri-tip trimmer. She further testified that the pain began in 1990 and continued and intensified through January 8, 1991, when she reported the problems to the company nurse.

The claimant was treated and/or rated by several doctors in this case. Dr. Wertzberger examined the claimant on behalf of IBP, Inc., and found only voluntary loss of motion. Dr. Wertzberger indicated he could find no medical explanation for her problem and diagnosed her as having overload symptoms of the cervical and thoracic spine, for which he rated the claimant at six (6%) percent to the body as a whole. Dr. Wertzberger also found significant symptom magnification by claimant. Dr. Wertzberger indicated that there was no medical reason to limit the claimant's prior job activities.

The claimant was also seen by Dr. Sergio Delgado, a board-certified orthopedic surgeon, who rated the claimant at seven to eight percent (7-8%) to the body as a whole permanent partial impairment as a result of upper extremity complaints and back problems. Dr. Delgado agreed with Dr. Wertzberger that no permanent restrictions were necessary.

The claimant was also examined by Dr. K. Dean Reeves, a psychiatrist from Topeka, Kansas, at the request of claimant's attorney. Dr. Reeves noticed symptom magnification in the claimant and provided treatment to the claimant of injections of dextrose into her muscles. Dr. Reeves diagnosed the claimant as having myofascial pain syndrome, created by an overload situation. Dr. Reeves indicated that claimant has impairment of twenty-five to forty percent (25-40%) permanent partial impairment of function to the body as a whole. Dr. Reeves could not point to any specific portion of the AMA Guides that allowed for the imposition of his impairment rating.

Claimant was also seen by Dr. Craig Yorke, M.D. in Topeka, Kansas and Patrick Murray, D.C., in Emporia, Kansas; however, no ratings were issued by these providers.

The Appeals Board finds most persuasive the evaluations by Dr. Wertzberger and Dr. Delgado. Dr. Wertzberger and Dr. Delgado applied the AMA Guides to the Evaluation of Permanent Impairment, Third Edition, Revised, to rate and evaluate the claimant. The eight percent (8%) award as determined by Special Administrative Law Judge William F. Morrissey should be affirmed. The Appeals Board finds that the testimony of Dr. Reeves is not persuasive in view of the findings on examination by the company physician. The Board, therefore, adopts the findings of Special Administrative Law Judge William F. Morrissey with regard to permanent partial impairment to the body as a whole attributed to these injuries.

With regard to entitlement to work disability, the claimant has the burden of proof to establish her right to an award of compensation by a preponderance of the credible evidence. K.S.A. 1990 Supp. 44-501(a), K.S.A. 1990 Supp. 44-508(g). Both

Dr. Wertzberger and Dr. Delgado indicated that there was no reason claimant could not return to her previous employment. Further, there is unrefuted evidence that the claimant was fired for cause, resulting from falsifying her employment application. Her absence from the job was related not to her physical injury, but rather to her misrepresentation on the medical history questionnaire from IBP, Inc. The evidence is clear that there were numerous physical injuries and physical problems that the claimant did not report to the employer.

The claimant provided a work disability evaluation from Mr. Donald E. Vander Vegt at the request of the claimant. Mr. Vander Vegt's restrictions are based upon conclusions and restrictions given by Dr. Reeves. Therefore, based upon the Board's adoption of the opinions of Dr. Wertzberger and Dr. Delgado, the evidence from Mr. Vander Vegt is not persuasive on the issue of work disability.

The Appeals Board, therefore, finds that the claimant has failed to meet her burden of proof in establishing her entitlement to work disability and the same should therefore be denied.

(2) The Appeals Board incorporates herein by reference the findings of the Special Administrative Law Judge in his Award dated March 21, 1994 as these findings relate to the issue of future medical, unauthorized medical and payment of the specific reasonable and necessary medical expenses incurred by the claimant.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated March 21, 1994, is hereby affirmed.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Melissa Dinh, and against the respondent, IBP, Inc., a qualified self-insured, for an accidental injury which occurred on January 8, 1991 and based on an average weekly wage of \$401.86, for 25.71 weeks of temporary total disability compensation at the rate of \$267.92 per week in the sum of \$6,888.22 and 389.29 weeks of compensation at the rate of \$21.43 per week in the sum of \$8,342.48 for an 8% permanent partial general body impairment of function making a total award of \$15,230.70.

As of March 21, 1994, there is due and owing claimant \$6,888.22 in temporary total compensation and 141.29 weeks of permanent partial compensation at the rate of \$21.43 per week in the sum of \$3,027.84, making a total due and owing of \$9,916.06.

The remaining 248 weeks are to be paid at the rate of \$21.43 per week, until paid or further order of the director.

Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey
Special Administrative Law Judge

\$150.00

Appino & Achten Reporting Service	
Transcript of Preliminary Hearing (5/10/91)	\$298.20
Transcript of Motion Hearing (1/6/93)	\$181.05
Deposition of Janet Lawrence	\$130.00
Deposition of Rodger Brownrigg	\$283.40
Deposition of Sergio Delgado, M.D.	\$359.00
Deposition of Craig Yorke, M.D.	\$158.20
Deposition of John J. Wertzberger, M.D.	\$439.95
Curtis, Schloetzer, Hedberg & Associates	
Transcript of Preliminary Hearing (8/12/91)	\$62.13
Transcript of Regular Hearing	\$231.60
Nora Lyon & Associates	
Transcript of Preliminary Hearing (1/24/92)	\$107.00
Transcript of Motion Hearing (11/1/91)	\$113.60
Continuation of Regular Hearing	\$692.45
Deposition of Patrick E. Murray	\$375.25
Deposition of Donald E. Vander Vegt	\$379.60
Deposition of K. Dean Reeves, M.D.	\$422.55
Deposition of Joseph G. Sankoorikal, M.D.	\$195.20
Barber & Associates	
Deposition of Jane Little	\$210.60

IT IS SO ORDERED.

Dated this ____ day of May 1995.

BOARD MEMBER_____
BOARD MEMBER_____
BOARD MEMBER PRO TEM

c: Diane F. Barger, Emporia, KS
Frederick Greenbaum, Kansas City, KS
John David Jurcyk, Lenexa, KS
Michael G. Patton, Emporia, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director